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SENATE BILL 1917

By Clabough

AN ACT to enact the Revenue Act of 2001, and to amend Tennessee Code Annotated, Title 3, Title 4, Title 5, Title 6, Title 7, Title 8, Title 9, Title 12, Title 16, Title 30, Title 36, Title 39, Title 40, Title 45, Title 47, Title 48, Title 55, Title 56, Title 57, Title 61, Title 62, Title 67, Title 68, Title 69, Title 70, and Title 71 relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is "The Revenue Act of 2001".

SECTION 2. Tennessee Code Annotated, Section 67-4-2004 is amended by deleting the language in subsection (16) in its entirety and substituting instead the following:

"Person" or "taxpayer" means every corporation, subchapter S corporation, limited liability company, professional limited liability company, registered limited liability company, partnership (general or limited), proprietorship, cooperative, joint-stock association, business trust, regulated investment company, real estate investment trust,

state-chartered or national bank, or state-chartered or federally chartered savings and loan association.

SECTION 3. Tennessee Code Annotated, Section 67-4-2004 is amended by adding the following new sections:

() For purposes of the payroll factor of the statutory apportionment formula used by a taxpayer doing business both within and without Tennessee, and for purposes of adjustments to net earnings under section 67-4-2006, “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services whether paid directly or paid indirectly by invoice pursuant to a staff leasing arrangement with a staff leasing company or staff leasing group, but excluding contributions made by the employer to qualified pension plans;

() “Professional person” means any of the following individuals who are licensed or registered under the applicable laws of this state or any state of United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States or the applicable laws of any foreign country:

- (A) A lobbyist;
- (B) An investment advisor;
- (C) An accountant;
- (D) An architect;
- (E) An engineer;
- (F) A landscape architect;
- (G) A sports agent;
- (H) An audiologist;
- (I) A chiropractor;
- (J) A dentist;
- (L) An optometrist;
- (M) An osteopathic physician;
- (N) A pharmacist;
- (O) A physician;
- (P) A podiatrist;
- (Q) A psychologist;
- (R) A speech pathologist;
- (S) A veterinarian;
- (T) An attorney.

() “Professional service business” means any business that, as its primary endeavor, offers any one or more of the services for which a professional person may be registered or licensed to offer;

() “Staff leasing arrangement” shall have the same definition as is set forth in section 62-43-103(a)(9);

() “Staff leasing company” shall have the same definition as is provided in section 62-43-103(a)(10); provided that, as used in this part, a staff leasing company must be licensed as a staff leasing company by the commissioner of the department of commerce and insurance pursuant to the provisions of section 62-43-108; and provided further, that a staff leasing company does not include “captive leasing companies” as defined in section 62-43-120;

() “Staff leasing group” shall have the same definition as is provided in section 62-43-103(a)(11); provided that, as used in this part, a staff leasing company must be licensed as a staff leasing group by the commissioner of commerce and insurance pursuant to the provisions of section 62-43-108; and provided further that, a staff leasing group does not include “captive leasing companies” as defined in section 62-43-120;

SECTION 4. Tennessee Code Annotated, Section 67-4-2006 is amended by deleting subsection (d) in its entirety and substituting instead the following:

(d) Except in the case of a financial institution, an insurance company, or an insurance holding company, a taxpayer shall then add to its net earnings, determined in accordance with applicable subsections (a), (b) and (c) of this section, an amount equal to the sum of compensation that exceeds, for any one individual, seventy-two thousand six hundred dollars (\$72,600) per tax year that is paid either to: (1) any individual who owns more than a one percent (1%) interest in the taxpayer’s stock, assets, profits (losses), or voting rights; or (2) a relative or family member of such owner. For purposes of this subdivision, “relative or family member of such owner” means the owner’s

spouse, or the owner's child, grandchild, parent or grandparent, or spouse of such child, grandchild, parent or grandparent.

(e) In addition, a professional service business shall then add to its net earnings determined in accordance with applicable subsections (a), (b), (c) and (d) of this section, an amount equal to the sum of compensation paid to any professional person employee that exceeds, for any one professional person employee, seventy-two thousand six hundred dollars (\$72,600) per tax year.

(f) Any amount added under subsections (d) or (e) of this section shall not be reduced by any net loss or loss carryover computed under subsections (a), (b) or (c) of this section. Taxpayers doing business both within and without Tennessee so as to be entitled to apportionment shall apportion the compensation to be added under subsections (d) or (e) of this section using the appropriate apportionment formula provided by this part.

(g) The amount computed under subsections (a), (b), (c), (d) and (e) of this section shall be the taxpayer's net earnings for purposes of the Tennessee excise tax base to which the tax rate is applied in section 67-4-2007.

SECTION 5. Tennessee Code Annotated, Section 67-4-2006(a) is amended by adding the following new subdivision:

() In the case of a sole proprietorship, "net earnings" or "net loss" is defined as an amount equal to: (a) the amount of net profit or loss from all trades, business, farms or professions engaged in by the proprietor, determined by applicable provisions of the internal revenue code as is reported on federal form 1040 or any variation thereof, and appropriate schedules, including any amount subject to self employment tax, without regard to any cap, and including the amount of any gains or losses from the sale of assets held or used in all trades, businesses, farms or professional activities; less: (b) seventy-two thousand six hundred dollars (\$72,600), provided, however, that this

amount shall not create or increase any net loss; (c) adjusted by subsections (b), (c), (d), (e) and (f) of this section.

SECTION 6. Tennessee Code Annotated, Section 67-4-2007 is amended by deleting the language in subsection (16) in its entirety and substituting instead the following:

All persons, except those having not-for-profit status, doing business in Tennessee, shall, without exception other than as provided herein, pay to the commissioner of revenue, annually, an excise tax, in addition to all other taxes, equal to six percent (6%) of the net earnings for the next preceding fiscal year for business done in this state during that fiscal year. Notwithstanding the fact a person is not-for-profit or otherwise exempted from the excise tax, such person shall be subject to the excise tax on all of its Tennessee net earnings and compensation paid to employees that exceeds, for any one employee, seventy-two thousand six hundred dollars (\$72,600) per tax year, that are attributable to any activities unrelated to and outside the scope of the activities that gave it an exemption status, including all unrelated business taxable income as defined in section 512 of the internal revenue code or are otherwise subject to income taxes under Subtitle A of such code.

SECTION 7. Tennessee Code Annotated, Section 67-6-102(2) is amended by deleting the language therein in its entirety and substituting instead the following:

"Business" includes any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect. "Business" includes occasional and isolated sales and transactions involving the transfer of aircraft, vessels, or motor vehicles between corporations or other business entities and their members or stockholders. "Business" includes transactions caused by the merger, consolidation, or reorganization of corporations or other business entities. "Business" also includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and

transfers between separate partnerships. Sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft which are so based shall constitute evidence thereof; "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction;

SECTION 8. Tennessee Code Annotated, Section 67-6-102(24) is amended by deleting subsections (E) and (H) in their entirety, and is further amended by deleting subdivision (F) in its entirety and substituting instead the following:

(F) (i) "Retail sale," "sale at retail" and "retail sales price" includes any service, and such service is subject to tax under this chapter, when that service is performed in Tennessee for a consideration. It is the legislative intent that all services performed in Tennessee be subject to sales tax unless specifically exempted in this chapter.

(ii) With respect to services, other than telecommunication services, such services shall be considered to be performed in Tennessee if:

(a) Performed completely in Tennessee; or

(b) Performed partially in Tennessee and partially outside of Tennessee, when the recipient or user of the service is located in Tennessee; or

(c) Performed partially in Tennessee and partially outside of Tennessee, if the recipient or user of the service is not located in Tennessee, but only to the extent of those services actually performed in Tennessee; or

(d) The place of performance cannot be determined, if the recipient or user of the service is located in Tennessee.

(iii) With respect to services, other than telecommunication services, such services performed partially in Tennessee and partly outside of Tennessee shall be presumed to have been performed completely in Tennessee unless the taxpayer can show of the place of performance by clear and cogent evidence.

(iv) With respect to interstate telecommunication services, only those charges for interstate telecommunications which are originated or received in this state and which are billed or charged to a service address in Tennessee shall be subject to tax;

SECTION 9. Tennessee Code Annotated Section 67-6-102 is amended by deleting subdivision (D) of paragraph (30) in its entirety and substituting instead the following:

“Telecommunications” does not include television programming or television services delivered by a provider of direct-to-home satellite service.

SECTION 10. Tennessee Code Annotated Section 67-6-102 is amended by adding the following new subsection:

() "Service" means all activities engaged in for other persons for a consideration, when the primary objective of the purchaser is the receipt of the benefit (if any) of the activity performed, as distinguished from the receipt of property. In determining what is a service, the intended use or stated objective of the contracting parties shall not necessarily be controlling.

SECTION 11. Tennessee Code Annotated Section 67-6-205 is amended by adding the following new subsection:

() The crediting provisions of sections 67-6-313(f) and 67-6-507(a) are specifically made applicable to the services described in section 67-6-102(24)(F)(i), when all or part of the performance of those services takes place outside of Tennessee.

SECTION 12. Tennessee Code Annotated Title 67, chapter 6, part 2 is amended by adding the following new section:

There is levied a tax at the rate of four percent (4%) of the cost price for all services taxable under this chapter when the same are not sold but are used or consumed; provided, that there shall be no duplication of the tax.

SECTION 13. Tennessee Code Annotated Title 67, chapter 6, part 3 is amended by adding the following as a new section:

Exempt from the tax imposed by this chapter are services performed by bona fide employees for their employers, to the extent their compensation is in the form of salary, commissions, or other compensation traditionally and normally provided to bona fide employees. Whether or not a person is a bona fide employee shall be determined based on the totality of the circumstances. Factors to be considered include, but are not limited to, whether the person paying the compensation reports employee compensation to the internal revenue service, whether the alleged employee is covered under worker's compensation laws, and whether the employer pays payroll taxes on account of its employment of the alleged employee.

SECTION 14. Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (f).

SECTION 15. Tennessee Code Annotated, Title 67, Chapter 6, Part 2 is amended by adding the following as a new section:

Notwithstanding any other provision of law to the contrary, the rate of any tax imposed under Sections 67-6-202, 67-6-205 or 67-6-212 shall be six percent (6%) if such taxes are to be distributed pursuant to Section 67-6-103(d).

SECTION 16. Tennessee Code Annotated, Section 67-6-202, is amended by deleting the words, numbers, punctuation and symbol, "six percent (6%)" as they appear in subsection (a) and substituting instead "four percent (4%)".

SECTION 17. Tennessee Code Annotated, Section 67-6-203, is amended by deleting the words, numbers, punctuation and symbol, “six percent (6%)” as they appear in subsection (a) and substituting instead “four percent (4%)”.

SECTION 18. Tennessee Code Annotated, Section 67-6-204, is amended by deleting the words, numbers, punctuation and symbol, “six percent (6%)” as they appear in subsection (a)(1) and substituting instead “four percent (4%)”.

SECTION 19. Tennessee Code Annotated, Section 67-6-205, is amended by deleting the words, numbers, punctuation and symbol, “six percent (6%)” as they appear in subsection (a) and substituting instead “four percent (4%)”.

SECTION 20. Tennessee Code Annotated, Sections 67-6-206 and 67-6-207 are repealed.

SECTION 21. Tennessee Code Annotated, Section 67-6-209 is amended by deleting the language therein in its entirety and substituting instead the following:

(a) Where a manufacturer, producer, compounder or contractor erects or applies tangible personal property, which the manufacturer, producer, compounder or contractor has manufactured, produced, compounded or severed from the earth, such person so using the tangible personal property shall pay the tax herein levied on the fair market value of such tangible personal property when used, without any deductions whatsoever; provided, that the foregoing shall not be construed to apply to contractors or subcontractors who fabricate, erect or apply tangible personal property which becomes a component part of a building, and which is not sold by them as a manufactured item.

(b) Where a contractor or subcontractor hereinafter defined as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, such contractor or

subcontractor shall pay a tax at the rate prescribed by Section 67-6-203 measured by the purchase price of such property, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid.

(c) The tax imposed by this section shall have no application where the contractor or subcontractor, and the purpose for which such tangible personal property is used, would be exempt from the sales or use tax under any other provision of this chapter. However, the transfer of tangible personal property by a contractor who contracts for the installation of such tangible personal property as an improvement to realty does not constitute a sale, except as provided in Section 67-6-102(8).

SECTION 22. Tennessee Code Annotated, Sections 67-6-216, 67-6-217, 67-6-218, 67-6-219, 67-6-221, 67-6-224, 67-6-225, and 67-6-226 are repealed.

SECTION 23. Tennessee Code Annotated, Section 67-6-227, is amended by deleting the words, numbers, punctuation and symbol, “eight and one-quarter percent (8.25%)” and substituting instead “five and one-half percent (5.5%)”.

SECTION 24. Tennessee Code Annotated, Section 67-6-301 is amended by deleting the language therein in its entirety and substituting instead the following:

The tax imposed by this chapter shall not apply to the direct product of the soil in the hands of the producer, and his immediate vendee.

SECTION 25. Tennessee Code Annotated, Sections 67-6-302, 67-6-303, 67-6-304, 67-6-305, 67-6-307, 67-6-309, 67-6-310, 67-6-311, and 67-6-312 are repealed.

SECTION 26. Tennessee Code Annotated, Section 67-6-313 is amended by deleting subsections (b) through (j) in their entirety.

SECTION 27. Tennessee Code Annotated, Sections 67-6-314, 67-6-316, 67-6-317, 67-6-318, 67-6-319, 67-6-320, 67-6-321, 67-6-322, 67-6-325, 67-6-327, and 67-6-328 are repealed.

SECTION 28. Tennessee Code Annotated, Section 67-6-329 is amended by

deleting the language therein in its entirety and substituting instead the following:

(a) The sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter:

(1) "Gasoline" as defined by statute in Tennessee, upon which a privilege tax per gallon is paid, and not refunded, except that pre-mixed engine fuel containing gasoline and oil, produced for use in two-cycle engines and not for use in the propulsion of an aircraft, vessel or any other vehicle, that is sold in containers of one gallon (1 gal.) or less, is not exempt from the tax imposed by this chapter.

(2) Motor vehicle fuel now taxed per gallon by chapter 3, part 13 of this title;

(b) No provision of this section shall be construed to amend or repeal the provisions of Section 67-6-301.

SECTION 29. Tennessee Code Annotated, Sections 67-6-330, 67-6-331, 67-6-332, 67-6-333, 67-6-334, 67-6-335, 67-6-336, 67-6-339, 67-6-340, 67-6-342, 67-6-344, 67-6-346, 67-6-347, 67-6-348, 67-6-349, 67-6-350, 67-6-351, 67-6-352, 67-6-353, 67-6-354, 67-6-355, 67-6-356, 67-6-528, 67-6-529, and 67-6-530 are repealed.

SECTION 30. Tennessee Code Annotated, Section 67-6-702, in subdivision (a)(1) thereof, is amended by deleting the words and symbols "two and three-fourths percent (2 3/4%)" and substituting "the amount prescribed in subdivision (a)(2)".

SECTION 31. Tennessee Code Annotated, Section 67-6-702, is amended in subdivision (a) by adding the following as a new subdivision, designated (2), and renumbering the succeeding subdivisions accordingly:

(2)(a) If on January 1, 2001, the local option rate in a county, city or town was two and three-quarters percent (2.75%), then the local option rate may not exceed two

percent (2%). If on January 1, 2001, the local option rate in a county, city or town was two and one-half percent (2.5%), then the local option rate may not exceed one and three-quarters percent (1.75%). If on January 1, 2001, the local option rate in a county, city or town was less than two and one-half percent (2.5%), then the local option rate may not exceed one and one-half percent (1.5%). On the effective date of this subdivision, all local option rates exceeding the applicable maximum are reduced to the maximum allowed by this subdivision.

(b) Notwithstanding the provisions of subdivision (a), any existing local option rate as of January 1, 2001, shall continue with respect to any tax imposed under this section if such taxes are to be distributed pursuant to sections 67-6-103(d) or 67-6-712(c).

SECTION 32. Tennessee Code Annotated, Section 67-6-702, is amended in subdivision (f) by deleting “two and twenty-five hundredths percent (2.25%)” and substituting “one and one-half percent (1.5%)”.

SECTION 33. Tennessee Code Annotated, Section 7-88-103(1) is amended deleting the second sentence and substituting the following:

In the event the state or local option rate for sales and use tax should change after a municipality has made application under this chapter or during the period any municipality is receiving an apportionment pursuant to this chapter, the department of revenue, after consultation with the commissioner of finance and administration, shall adjust the base tax revenues to reflect such change in tax rate so as to provide for substantially the same economic benefit to the municipality and substantially the same overall allocation of revenue between the municipality and the state as is provided in this chapter;

SECTION 34. Tennessee Code Annotated Section 67-2-102 is amended by deleting “six percent (6%)” and substituting instead “four percent (4%).”

SECTION 35. Tennessee Code Annotated Section 67-2-119 is amended by deleting the language therein in its entirety and substituting instead the following:

(a) Of the taxes collected under the provisions of this chapter upon income from stocks and bonds taxable at the rate of four percent (4%) per annum, fifty-seven percent (57%) shall be distributed among the cities and counties of the state except as may be limited by subsection (c), and all remaining collections shall be paid into the general fund of the state treasury.

(b) The portion of the tax collected which is to be distributed among the cities and counties of the state as provided by subsection (a), referred to herein as “the local portion,” shall be distributed as follows:

(1) The local portion of the net tax collected from a taxpayer, who resides within the corporate limits of any municipality, shall be distributed to the city within which such taxpayer resides, except as may be limited by subsection (c).

(2) The local portion of the net tax collected from a taxpayer, who resides within a county but not within the corporate limits of any municipality, shall be distributed to the county in which such taxpayer resides, except as may be limited by subsection (c).

(c) In each instance, the payment to cities and counties covering collections made hereunder during any fiscal year shall be made on or before July 31 immediately following the close of that year; provided, however, that the total distribution to any city, and to any county, in any fiscal year shall not exceed the highest amount distributed to that city, or to that county, pursuant to this chapter during the fiscal year ending June 30, 1999, 2000, or 2001.

SECTION 36. Tennessee Code Annotated, Title 67, Chapter 8, is amended by deleting parts 2 through 4 and by adding the following new part:

PART 8 - INHERITANCE TAX OF 2001 - FEDERAL DEATH TAX CREDIT

67-8-801. A tax is levied on the transfer of every taxable estate, as defined by 2051 of the Internal Revenue Code, as amended, of every individual who dies a domiciliary of Tennessee. A tax is also levied on the transfer by every individual who dies not a domiciliary of Tennessee of real property situated in this state and/or tangible personal property which has an actual situs within this state. The tax imposed by this part is a tax exclusively for the use of the state, and no county, municipality or taxing district shall have power to levy any like tax.

67-8-802. The tax levied by this part shall be determined and paid at those times, in the manner, and by those persons specified in this part.

67-8-803. (a) It shall be the duty of the personal representative of the estate of any individual, who dies a domiciliary of this state and whose estate is required to file a federal estate tax return, to file with the commissioner of revenue, within the time period required for filing such return with the federal authorities, a report on such forms as the commissioner may prescribe, a copy of the federal estate tax return and a copy of the decedent's will, if any.

(b) If the estate's personal representative is not required to file a federal estate tax return under applicable federal law and such representative cannot file a separate affidavit, pursuant to section 30-2-616, with the court administering the estate because the decedent made certain lifetime gifts of property, the representative shall file with the commissioner, within nine (9) months from the death of the decedent, a report on such forms as the commissioner may prescribe and a copy of the decedent's will, if any.

(c) The tax due under this section shall be the maximum amount allowable as a credit for state death taxes under the Internal Revenue Code, as amended. However, if the decedent owned at the time of his or her death real property or tangible personal property having a situs in one or more states, and any other such state requires the payment of a death tax for which a credit is received against federal taxes, the

inheritance tax due under this part shall be reduced to an amount which bears the same ratio to the total state death tax credit allowable for federal estate tax purposes as the gross value of the property taxable in this state bears to the value of the entire gross estate for federal estate tax purposes. Such reduction of tax due shall be allowed only to the extent that proof is provided to the commissioner of payment of any other such state tax or taxes.

(d) The personal representative of the estate shall file with the commissioner a copy of the federal estate tax closing letter within thirty (30) days of issuance by the federal authorities. If the maximum amount allowable as a credit for state death taxes as finally determined by the federal authorities for federal estate tax purposes is increased or decreased with respect to the amount shown on the original federal return, the personal representative of the estate shall file with the commissioner, within thirty (30) days of the date of the federal adjustment, a copy of the documentation received from the federal authorities, and such other or additional documentation as the commissioner may require, showing all changes made in the original return and the increase or decrease in the amount allowable as a credit for state death taxes, and shall pay any additional tax due.

(e) For purposes of this part, the term "personal representative" includes the executor, administrator, and any other person liable for the payment of the federal estate tax.

67-8-804. (a) It shall be the duty of the personal representative of the estate of any individual, who dies not a domiciliary of this state but who owns or controls real property located in this state or tangible personal property having a situs in this state and whose estate is required to file a federal estate tax return, to file with the commissioner, within the time period required for filing such return with the federal authorities, a report

on such forms as the commissioner may prescribe, a copy of the federal estate tax return and a copy of the decedent's will, if any.

(b) If the estate's personal representative is not required to file a federal estate tax return under applicable federal law and such representative cannot file a separate affidavit, pursuant to section 30-2-616, with the court administering the estate in Tennessee because the decedent made certain lifetime gifts of property, the representative shall file with the commissioner, within nine (9) months from the death of the decedent, a report on such forms as the commissioner may prescribe and an exact copy of the decedent's will, if any.

(c) The tax due under this section shall be an amount that bears the same ratio to the total maximum state death tax credit allowable for federal estate tax purposes as the gross value of the property taxable in this state bears to the value of the entire gross estate for federal estate tax purposes.

(d) The personal representative of the estate shall file with the commissioner a copy of the federal estate tax closing letter within thirty (30) days of issuance by the federal authorities. If the maximum amount allowable as a credit for state death taxes as finally determined for federal estate tax purposes by the federal authorities is increased or decreased with respect to the amount shown on the original return, the personal representative of the estate shall file with the commissioner, within thirty (30) days of the date of the federal adjustment, a copy of the documentation received from the federal authorities, and such other or additional documentation as the commissioner may require, showing all changes made in the original return and the increase or decrease in the amount allowable as a credit for state death taxes, and shall pay any additional tax due.

67-8-805. (a) The taxes levied by this part shall be due and payable to the commissioner by the personal representative of the estate on or before the due date of the federal estate tax return.

(b) In the event of late filing of required documentation, or in the event of late payment of all or a portion of the tax due or payment of any additional taxes due caused by a federal adjustment, penalties and interest shall be payable pursuant to applicable law.

(c) The commissioner has authority, in the exercise of the commissioner's discretion, for good cause shown, to grant the personal representative an extension of time to file the documents required by section 67-8-803 or section 67-8-804 and pay the tax herein levied, without penalty attaching. However, the tax shall bear interest as required by applicable law from the original due date until paid. The penalties required by applicable law shall be paid by the personal representative unless the tax and interest thereon shall be paid on or before the expiration date of the extension granted by the commissioner.

67-8-806. (a) It is the duty of the clerk of the court wherein an estate is administered by an executor, administrator, or trustee, within thirty (30) days of the date of its issuance of letters of administration or letters testamentary, to deliver, or forward by mail, to the commissioner, a statement under the clerk's seal of office giving the name and date of death of the decedent and the decedent's address at the time of death, and the name and address (and the telephone number, if known) of the executor, administrator, or trustee qualified.

(b) For this service, the clerk shall be allowed to demand and collect in advance, five dollars (\$5.00), which amount shall be in addition to the usual and customary probate fees allowed by law and shall be paid by the representative of the estate and may be deducted as a part of the cost of administration.

(c) Any clerk who shall violate any of the provisions of this section shall be subject to a penalty of five hundred dollars (\$500), to be recovered by the commissioner, for the benefit of the state, in any court of competent jurisdiction. However, the commissioner may, in the commissioner's discretion, waive or reduce such penalty in any case to not less than one hundred dollars (\$100) where there appears no manifest intent to evade this part.

67-8-807. When any personal representative of a decedent's estate fails to file any of the returns, reports or documents required by section 67-8-803 or section 67-8-804, the commissioner is authorized to assess taxes against the estate based on any information available.

67-8-808. (a) (1) All taxes due by an estate under this part shall be paid by the executor, administrator or trustee from the assets subject to the inheritance tax. No part of the property of an estate subject to this tax shall be distributed until the tax thereon has been paid; provided, that such executor, administrator or trustee may, with the written consent of the commissioner, sell or transfer property of the estate sufficient to pay the tax.

(2) For the sole purpose of negotiating the sale of real estate, stocks, bonds, and other registered assets prior to the time of the payment of taxes due the state, the commissioner is authorized to waive the liens imposed by section 67-1-1403(d) against the transferred property for taxes due by an estate; however, such waiver shall not affect the state's tax liens against any other property of the decedent or the decedent's estate.

(3) Notwithstanding any provision of law to the contrary, where an individual's death terminates his or her interest in real estate, stocks, bonds, and other registered assets, which property was previously owned with the surviving spouse in a tenancy by the entirety or a joint tenancy with right of survivorship, the commissioner's waiver

pursuant to subdivision (a)(2) is not required for the surviving spouse to transfer such property free of liens for taxes due by the decedent's estate under this part.

(b) For purposes of subsection (a), penalty and/or interest attributable to such taxes shall be considered to be a part of such taxes.

67-8-809. (a) Upon the payment of the full amount of taxes levied against an estate under this part, the commissioner shall issue receipt therefor in duplicate to the representative of the estate, one (1) copy of which shall be filed in the office of the clerk of the court in which such estate is being administered. Except as provided in section 30-2-616, no final accounting or settlement of such estate shall be made by the court prior to the filing of such receipt, or until the filing of a certificate by the commissioner that no tax is due thereon, such receipt or certificate to be furnished by the commissioner without cost to the estate or to the beneficiaries thereof.

(b) Such receipt or certificate may be recorded in the office of the register of the county in which such real estate is situated, and it shall be conclusive proof that the tax applicable to such real estate has been paid, and any lien thereon shall be thereby released.

67-8-810. (a) Failure or refusal to file any return or document provided for in this part is a Class C misdemeanor. The payment of any such criminal penalty shall in not affect the liability for the tax, interest and any other penalties prescribed herein.

(b) The filing of a false return, document or affidavit with intent to deceive constitutes the crime of perjury.

67-8-811. Executors, administrators and trustees shall be liable for all taxes payable on the estate, together with any interest or penalties herein provided, until the same shall have been paid; provided, that in no case shall such executor, administrator or trustee be liable for a greater amount than was actually received by the executor, administrator or trustee.

67-8-812. If the tax levied under this part is not paid in full by the personal representative of the estate when due, and if such representative has paid the maximum amount of the estate's liability for which such representative is liable under section 67-8-811, the beneficiaries of any assets upon which the inheritance tax is levied by section 67-8-801 shall be personally liable for such tax to the extent of the value of the assets included in the taxable estate and received by such beneficiaries.

67-8-813. The commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this part.

67-8-814. Upon the issuance by the state of a receipt to an administrator or executor who has paid the tax levied under this part, the administrator or executor shall be subrogated to any lien or right to proceed against any transferred property in the hands of a transferee, donee, or bona fide purchaser which the state might have had and the issuance of the receipt by the commissioner after the payment of the tax due shall be deemed an assignment by the state to the administrator or executor of the lien or right to proceed against the transferred property, the transferee, donee or bona fide purchaser and shall be conclusive evidence thereof; provided, that for the lien to remain effective, the executor or administrator must file with the register of the county of decedent's residence and any county wherein any real property affected is located within fifteen (15) days of the issuance of such tax receipt, a notice of such lien, such notice to contain the administrator's or executor's name, the name of the decedent whose estate is involved, a description of the property against which the lien is claimed, and the amount of lien claimed, and upon satisfaction of the lien, a release thereof.

67-8-815. The commissioner shall promptly deposit to the credit of the state treasurer in state depositories all moneys received under the provisions of this part, and all such moneys shall be earmarked and allocated specifically and exclusively to the general fund.

SECTION 37. Tennessee Code Annotated, Section 67-1-1403(d) is amended by inserting the words “and part 8” between the words “part 2-5” and “of this title.”

SECTION 38. Tennessee Code Annotated, Section 67-1-1501(b)(4), is amended by adding the words “or additional inheritance tax” after the words “additional estate tax” each time they appear in that subdivision.

SECTION 39. Tennessee Code Annotated, Section 67-1-1802(a)(4), is amended by deleting the words “estate taxes due” in that subdivision and substituting in lieu thereof the words “any estate taxes or inheritance taxes that may be due.”

SECTION 40. Tennessee Code Annotated, Section 67-8-501, is amended by inserting the words and punctuation “and parts 6-8 of this chapter,” after the words “As used in this part”.

SECTION 41. Tennessee Code Annotated, Section 67-8-605, is amended by deleting the language “inheritance tax law, as stated in parts 3-5 of this chapter” and substituting instead the language “applicable inheritance tax law, as stated in parts 3-5 and/or part 8 of this chapter”.

SECTION 42. Tennessee Code Annotated, Title 30, Chapter 2, Part 6, is amended by adding the following new section:

30-2-616. (a) If the estate’s personal representative is not required by federal law to file a federal estate tax return, the court in which the estate is being administered in Tennessee may close the estate without the commissioner of revenue’s issuance of a receipt for payment of taxes by the estate or a certificate that no taxes are due from the estate pursuant to section 67-8-809, if the representative files with the court a separate affidavit, executed to the best of such representative’s knowledge, information and belief, under penalties of perjury, affirming the following facts:

(1) The estate is not required by federal law to file a federal estate tax return; and

(2) Either that:

(A) the decedent made no gratuitous transfers of property by gift, or other transfers for less than adequate and full consideration in money or money's worth, upon which gift taxes were payable pursuant to applicable law by the decedent; or

(B) all applicable gift taxes upon any gratuitous transfers of property made by the decedent during the decedent's life, by gift, or other transfers for less than adequate and full consideration in money or money's worth, have been paid to the commissioner.

(b) Any person who knowingly files a false affidavit pursuant to this section with intent to deceive or to evade tax shall be liable for any inheritance taxes and/or gift taxes owed by the estate.

(c) The personal representative shall file a duplicate original of such separate affidavit with the commissioner of revenue within ten (10) days of filing such affidavit with the court.

(d) Notwithstanding any provision of law to the contrary, an order of the court administering the estate of a decedent that closes the estate and affirms the filing of an affidavit with the court pursuant to subsection (a), shall constitute conclusive proof that the state's liens for taxes provided for by section 67-1-1403(d), are extinguished, and such order may be recorded in the office of the register of any appropriate county.

SECTION 43. Tennessee Code Annotated, Section 30-2-601(b) is amended by deleting subdivision (1) and by substituting instead the following:

(1) That the personal representative has properly administered the estate; has paid or settled all claims which were lawfully presented; has paid all expenses of administration; has mailed or delivered notice of the requirement to file claims, as prescribed in section 30-2-306(e), to the creditors of the decedent who were known to or reasonably ascertainable by the personal representative; has filed with the clerk of the

court exercising probate jurisdiction the final receipt and release from the department of revenue evidencing payment of all Tennessee inheritance tax due from the estate, or has filed an affidavit with the court and the commissioner pursuant to section 30-2-616; has distributed the estate according to the will and obtained and filed receipts for specific bequests or has distributed the estate according to the laws of intestate succession; and

SECTION 44. Tennessee Code Annotated, Section 30-4-103(6)(B) is amended by deleting subdivision (i) and by substituting instead the following:

(i) Either the tax receipt or the tax certificate issued pursuant to section 67-8-420 or section 67-8-809, or the affidavit filed pursuant to section 30-2-616; and

SECTION 45. Tennessee Code Annotated, Title 67, Chapter 8, Part 1, is repealed.

SECTION 46. (a) Sections 2 through 6 of this Act shall take effect upon becoming law and shall apply to tax periods beginning on or after July 1, 2001, the public welfare requiring it.

(b) Sections 7 through 33 of this Act shall take effect on October 1, 2001, the public welfare requiring it.

(c) Section 34 of this Act shall take effect upon becoming law and shall apply to tax periods beginning on or after January 1, 2001, the public welfare requiring it.

(d) Section 35 of this Act shall take effect on July 1, 2002, the public welfare requiring it.

(e) Sections 36 through 41 shall take effect on January 1, 2002, and shall apply to decedents dying on or after January 1, 2002, the public welfare requiring it. The provisions of Tennessee Code Annotated, Title 67, Chapter 8, Parts 2 through 4, are repealed effective January 1, 2002, but shall continue to apply to decedents dying on or before December 31, 2001, and to the administration of such decedents' estates, the public welfare requiring it.

(f) Sections 42 through 44 shall take effect upon becoming law and shall apply to all estates open at that time, the public welfare requiring it.

(g) Section 45 shall take effect on January 1, 2002, and shall apply to gifts made on or after that date, the public welfare requiring it. The provisions of Tennessee Code Annotated, Title 67, Chapter 8, Part 1, shall continue to apply to gifts made before January 1, 2002.

(h) All other sections of this Act shall take effect upon becoming law, the public welfare requiring it.